UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.9/SR.540
19 June 1995
ENGLISH
ORIGINAL: FRENCH

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-seventh session

SUMMARY RECORD OF THE 540th MEETING

Held at Headquarters, New York,
on Wednesday, 15 June 1994 at 10 a.m.

Chairman: Mr. MORÁN (Spain)

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NEW INTERNATIONAL ECONOMIC ORDER: PROCUREMENT (continued)

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The meeting was called to order at 10.15 a.m.

NEW INTERNATIONAL ECONOMIC ORDER: PROCUREMENT (continued)
(A/CN.9/XXVII/CRP.2/Add.4, CRP.3 and CRP.5)

Report of the drafting group (continued) (A/CN.9/XXVII/CRP.2/Add.4)

1. Mr. CHATURVEDI (India) said that the footnote on the first page of document A/CN.9/XXVII/CRP.2/Add.1 reflected his delegation's position more accurately than the one on the first page of document A/CN.9/XXVII/CRP.2/Add.4. The wording "without thereby superseding the UNCITRAL Model Law on Procurement of Goods and Construction" was especially regrettable, since neither UNCITRAL nor the drafting group had a mandate to supersede the Model Law adopted at the previous session. He regretted that his proposal to insert a sentence indicating that the previous Model Law would remain intact had not been adopted. He also expressed surprise that the last sentence of that footnote referred to a Guide to Enactment, which was as yet only a draft amendment to the old Guide to Enactment of the UNCITRAL Model Law on Procurement of Goods and Construction (A/CN.9/393).

2. Mr. HUNJA (International Trade Law Branch) said that the wording cited by the representative of India was intended precisely to clarify the relationship between the two Model Laws and that the phrase "without thereby superseding" made it clear that the new Model Law including services left did not alter the text of the UNCITRAL Model Law on procurement of Goods and Construction adopted at the twenty-sixth session. The guide referred to in the last sentence was the full text which the secretariat would produce by amalgamating documents A/CN.9/393 and A/CN.9/394 in order to incorporate the draft amendments adopted at the current session into the earlier Guide. The footnote did not therefore refer only to the draft amendments, but to the new guide, which would include the amendments to the earlier Guide adopted by UNCITRAL.

3. Mr. WALLACE (United States of America) endorsed the remarks by the representative of the secretariat and proposed that the secretariat should prepare a concordance between the articles of the earlier Model Law and those of the new one. As those articles had been renumbered and put in very different order, that would make things much easier for representatives and legislators.

4. Mr. GOH (Singapore) suggested that the words "and Services" in the first sentence of the footnote should be underlined to draw a clear distinction between the titles of the two Model Laws.

5. Mr. CHATURVEDI (India) insisted that it should have been made clear that the first Model Law would remain "intact" rather than using the word "replace" since there had never been any question of replacing it. The reference to the Guide was inappropriate, since it had been agreed only to discuss the additions which would be made to the old Model Law in order to include the procurement of services.

6. Mr. GRIFFITH (Observer for Australia) said that he accepted the proposed text in the light of the explanations provided by the representative of the

secretariat. The text was unambiguous as worded and did in fact meet the concerns expressed by the representative of India.

7. The CHAIRMAN said that if he heard no objection, he would take it that the Commission wished to adopt the text of the footnote on the first page of document A/CN.9/XXVII/CRP.2/Add.4, as it stood.

8. It was so decided.

9. The CHAIRMAN said that the footnote referring to the title of article 16, the title of chapter III bis, article 41 ter and article 41 quater had all been reworded to meet the wishes of delegations and that those texts should not give rise to any objections.

10. Mr. CHATURVEDI (India) wondered why, in the changes proposed to article 41 quater, the expression "suppliers and contractors" had been replaced by the expression "suppliers or contractors".

11. Mr. HUNJA (International Trade Law Branch) said that the drafting group had sought to bring the text of article 41 quater into line with the provisions relating to tendering and evaluation of tenders.

12. The CHAIRMAN said that the changes made to article 41 sexies, 41 sexies bis and 41 sexies quater were purely formal. If he heard no objection, he would take it that the Commission wished to adopt document A/CN.9/XXII/CRP.2/Add.4.

13. It was so decided.

Adoption of the Model Law and recommendation (A/CN.9/XXVII/CRP.5)

14. Mr. BURMAN (United States of America) proposed that in paragraph 2 of the draft resolution contained in document A/CN.9/XXVII/CRP.5, the phrase "interested bodies" should be replaced by a reference to international lending organizations and to regional development finance institutions. Those two groups of international agencies were among the main users of the Model Law, which was why it seemed useful to mention them in that context, provided that they did not conflict with standard practice in respect of United Nations resolutions.

15. Mr. CHATURVEDI (India) asked whether the second preambular paragraph of the preamble was a statement of fact. He thought that in the fourth preambular paragraph it would be preferable to say "at the present session" rather than "at that session", in order to avoid any possible ambiguity.

16. Mr. HERRMANN (Secretary of the Commission) said that the wording of the second preambular paragraph had been used in the draft resolution adopted at the previous session of the Commission and that the General Assembly had endorsed it. As far as he knew, nothing had changed in that respect.

17. With regard to the proposal made by the representative of the United States of America, he did not think there was any rule forbidding the mention of financing or loan institutions in United Nations resolutions. That possibility

was left to the discretion of UNCITRAL, but it seemed preferable to leave the text as it was and to refer to "Governments and other interested bodies" without being more precise.

18. The CHAIRMAN said that if he heard no objections, he would take it that the Commission wished to adopt the draft resolution contained in document A/CN.9/XXVII/CRP.5.

19. It was so decided.

Draft paragraphs for the Guide to Enactment of the UNCITRAL Model Law on Procurement of Goods, Construction and Services (A/CN.9/XXVII/CRP.3)

20. Mr. BURMAN (United States of America) commended the secretariat for its prompt editing of the text, which should replace the footnote to the Model Law, whose substance had been preserved.

21. Mr. JAMES (United Kingdom) joined the representative of the United States of America in commending the secretariat. With regard to the text in question, he had only minor reservations of an editorial nature. At the end of paragraph 13, the phrase "not appropriate or feasible" echoed the words that had been used to refer to tendering in the earlier Guide. The word "appropriate" had in fact been used in the Model Law to refer to procurement of services. Under what had become article 16, States could choose the method of tendering if it was more appropriate than the principal method. The wording of article 13 bis could perhaps be a little less prescriptive towards those States which adopted the Model Law. In the last sentence of article 13 bis, the words "are in many respects similar" would benefit from being made more precise. It might be useful to explain under what circumstances States might wish to choose methods other than those specified in article 17, especially since the principal method for the procurement of services involved a certain number of obligatory stages which were spelt out in the Model Law, while other methods were much more flexible.

22. Mr. GRIFFITH (Observer for Australia) said that in the phrase "in many respects similar", the word "similar" did not mean "identical", and he could not support the statement made by the representative of the United Kingdom.

23. The CHAIRMAN said that if he heard no objections, he would take it that the Commission wished to adopt document A/CN.9/XXVII/CRP.3.

24. It was so decided.

The discussion covered in the summary record ended at 11 a.m.